

August 16, 2005

Howard Weinberg  
General Counsel  
New Motor Vehicle Board  
[Address Redacted]  
Sacramento, CA 95814

**Re: Your Request for Informal Assistance  
Our File No. I-05-147**

Dear Mr. Weinberg:

This letter is in response to your request for informal assistance regarding the economic disclosure provisions of the Political Reform Act (the "Act").<sup>1</sup> The assistance provided in this letter is solely based on the facts provided to us in your letter requesting informal assistance. Our assistance is therefore only applicable to the extent that the facts provided to us in your letter are correct, and all of the material facts have been provided. The Commission does not act as a finder of fact when issuing informal assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)<sup>2</sup>

### QUESTION

Is a reappointed member of the New Motor Vehicle Board required to file leaving and assuming office statements of economic interests if the reappointment occurs more than 30 days after the member's original term expires but while the member continues to serve during a maximum one-year holdover period?

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<sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Reg. 18329, subd. (c), copy enclosed.)

## CONCLUSION

No. As the member does not leave office, there is no duty to file leaving and assuming office statements of economic interests.

## FACTS

The New Motor Vehicle Board (the NMVB) is composed of nine appointed members. The members are designated in the NMVB's conflict of interest code. Under Vehicle Code section 3003, subdivision (a), each member is appointed for a four year term, but may continue to hold office after his or her term expires until a successor is appointed and qualifies to serve. However, this holdover period may not exceed one year. Members completing a term are eligible to be reappointed to a subsequent term.

When a board member is reappointed to serve an immediately subsequent term, the reappointed board member typically begins the subsequent term more than 30 days after the original term has expired. This is due to the length of time normally required for the application and reappointment process to be completed.

## ANALYSIS

An express purpose of the Act, as set forth in section 81002, subdivision (c), is that the assets and income of public officials, which may be materially affected by their official actions, should be disclosed, and in appropriate circumstances, the officials should be disqualified from acting, in order that conflicts of interest may be avoided. To that end, the Act requires specified public officials to disclose their economic interests as provided in sections 87200-87210, and a broader group of public officials to disclose their economic interests as provided in the conflict of interest code of the agency that employs them. (§§ 87300-87302.6.)<sup>3</sup>

Section 87302, subdivision (b) provides that an agency's conflict of interest code must require every new designated employee to file a statement of economic interests within 30 days of assuming office, disclosing his or her reportable investments, business positions, and interests in real property held on, and income received during the 12 months before, the date of assuming office. This subdivision also provides that an agency's conflict of interest code must require every designated employee to thereafter file annual statements of economic interests, for each year that the employee remains in office, at a time specified in the agency's conflict of interest code, disclosing his or her reportable investments, business positions, interests in real property, and income held or received during the previous calendar year or since the designated employee took office if during the calendar year. Section 87302, subdivision (b) finally provides that an agency's conflict of interest code must require every designated employee who leaves

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<sup>3</sup> As the NMVB has been in existence since 1973, we shall not make reference to section 87302.6 in responding to your question, as that section only applies to members of a board or commission of a newly created agency.

office to file, within 30 days of leaving office, a statement of economic interests disclosing his or her reportable investments, business positions, interests in real property, and income held or received during the period between the closing date of the last statement required to be filed and the date of leaving office.

Under the above-described reporting scheme, the duty to file a leaving office statement of economic interests is not triggered until an official leaves office. Although neither the Act nor Commission regulations provides a concise definition for what constitutes leaving office, such a definition has been provided in past advice letters. In particular, the *Carr* Advice Letter, I-93-387 declared that a designated employee leaves office at the point at which he or she permanently stops performing the duties of the office.

In your request for assistance, you have described a situation in which a board member continues to occupy a position on the board during a statutorily authorized holdover period, even though his or her term of office has expired, and is then reappointed to another term without any break in service. Under these facts, the board member never stops performing his or her duties, and thus does not leave his or her current office or assume a new office. Accordingly, the official does not incur a duty to file either a leaving office or an assuming office statement of economic interests. The board member simply remains obligated to file annual statements of economic interests at the time specified in the NMVB's conflict of interest code.<sup>4</sup>

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By:

Steven Benito Russo  
Senior Commission Counsel  
Legal Division

Enclosure

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<sup>4</sup> In your request for assistance, you inquired about the application of regulation 18735, subdivision (c) to this situation. As this regulation only applies to designated employees who leave office after the expiration of a term, we do not find the regulation pertinent to the situation that you described.